

§ 8.59

§ 8.59 Proof; variance; amendment of pleadings.

In the case of a variance between the allegations in a pleading, the Administrative Law Judge may order or authorize amendment of the pleading to conform to the evidence. The party who would otherwise be prejudiced by the amendment will be given reasonable opportunity to meet the allegation of the pleading as amended, and the Administrative Law Judge shall make findings on an issue presented by the pleadings as so amended.

§ 8.60 Motions and requests.

Motions and requests may be filed with the Director of Practice or with the Administrative Law Judge.

§ 8.61 Representation.

A respondent or proposed respondent may appear in person or be represented by counsel or other representative who need not be enrolled to practice before the Bureau. The Director of Practice may be represented by an Attorney or other employee of the Treasury Department.

§ 8.62 Administrative Law Judge.

(a) *Appointment.* An Administrative Law Judge, appointed as provided by 5 U.S.C. 3105, shall conduct proceedings upon complaints for the disbarment or suspension of attorneys, certified public accountants, or enrolled practitioners.

(b) *Responsibilities.* The Administrative Law Judge in connection with any disbarment or suspension proceeding shall have authority to:

- (1) Administer oaths and affirmation;
- (2) Make rulings upon motions and requests; these rulings may not be appealed prior to the close of the hearing except at the discretion of the Administrative Law Judge in extraordinary circumstances;
- (3) Rule upon offers of proof, receive relevant evidence, and examine witnesses;
- (4) Take or authorize to the taking of depositions;
- (5) Determine the time and place of hearing and regulate its course and conduct;

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(6) Hold or provide for the holding of conferences to settle or simplify the issues by consent of the parties;

(7) Receive and consider oral or written arguments on facts or law;

(8) Make initial decisions;

(9) Adopt rules of procedure and modify them from time to time as occasion requires for the orderly disposition of proceedings; and

(10) Perform acts and take measures as necessary to promote the efficient conduct of any proceeding.

§ 8.63 Hearings.

(a) *Conduct.* The Administrative Law Judge shall preside at the hearing on a complaint for the disbarment or suspension of an attorney, certified public accountant, or enrolled practitioner. Hearings will be stenographically recorded and transcribed and the testimony of witnesses will be received under oath or affirmation. The Administrative Law Judge shall conduct hearings pursuant to 5 U.S.C. 556.

(b) *Failure to appear.* If either party to the proceedings fails to appear at the hearing, after due notice has been sent, the Administrative Law Judge may deem them to have waived the right to a hearing and may make a decision against the absent party by default.

§ 8.64 Evidence.

(a) *Rules of evidence.* The rules of evidence prevailing in courts of law and equity are not controlling in hearings. However, the Administrative Law Judge shall exclude evidence which is irrelevant, immaterial, or unduly repetitious.

(b) *Depositions.* Depositions of witnesses taken pursuant to § 8.65 may be admitted as evidence.

(c) *Government documents.* Official documents, records, and papers of the Bureau of Alcohol, Tobacco and Firearms and the Office of the Director of Practice are admissible in evidence without the production of an officer or employee to authenticate them. These documents, records and papers may be evidenced by a copy attested or identified by an officer or employee of the Bureau or the Treasury Department.